***THE HON'BLE SRI JUSTICE V.ESWARAIAH**

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**+WRIT PETITION NO.7733 OF 2004**

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%Dated 14-12-2004

# Smt.K.Vijaya Bharathi and others.

Petitioners.

VERSUS

$ The Govt. of Andhra Pradesh, rep. by its

Prl. Secretary to Government, Social Welfare (RS.II) Department,

Secretariat, Hyderabad.

… Respondent.

! Counsel for Petitioners : Mr. M.R.K.Chowdary, Senior Counsel

appearing for Mr.M.Sudheer Kumar

^ Counsel for Respondent No.1: G.P. for Social Welfare and

Mr.Vijaya Bhaskar Moola

^Counsel for Respondent No.2 : Mr.S.S.Prasad, Senior Counsel

^ Counsel for Respondent No.3: Mr.G.Nagaraju

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>HEAD NOTE:

? Cases referred

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE V.ESWARAIAH**

WRIT PETITION No. 7733 of 2004

Between:

1 Smt.K.Vijaya Bharathi, D/o K.Suryanarayana,
Working as Principal, A.P.S.W.R.S.G.(RPRP), Andole at Jogipet
and r/o Andole, Medak District.
2 Smt.T.Nagalaxmi, D/o T.V.L.Narsimha Rao,
Working as Principal, APSWRS (RPRP) Girls,
Inugurthy Village and r/o Inugurthy Village,
Kesamudram Mandal, Warangal District.
3 P.Surendra Babu, S/o P.Munaswamy Chetty,
Working as Principal, APSWRS for Girls (RPRP),
Thonduru Village and r/o Thonduru Village & Mandal,
Kadapa District.
4 Smt.S.Chitty, D/o S.Ayyappanaidu,
Working as Principal, APSWR School for Girls, Madakalavaripalli,
r/o Madakalavaripalli, T.G.P.Colony, Badwel, Kadapa District.
5 K.Ramachandran, S/o K.Ganganna,

Working as Principal, APSWR School for Girls, Gundlakunta,
r/o Gundla Kunta, Peddamudium Mandal, Kadapa District.

6 G.Murali Mohan Rao, S/o Vidya Sagar Rao,
Working as Principal, APSWRS (RPRP) Girls, Palakurthy,
r/o Palakurthy, Warangal District.

7 Ch.Ashok Kumar, S/o Rajaiah,
Working as Principal, APSWRS (RPRP)(G), Elkathurthy,
r/o Elkathurthy, Karimnagar District.

8 Smt.G.Jyothi, D/o G.S.Sathyagnani,
Working as Principal, APSWR G (RPRP) School, AMC Gajwel,
r/o Gajwel, Medak District.

9 D.Anjaneya Prasad, S/o D.Suraiah,
Working as Principal, APSWR School (G) RPRP, Chityal,
r/o Chityal (M), Warangal District.

10 S.V.Satya Rao, S/o Koteswara Rao,
Working as Principal APSWRS (RPRP) Girls, Gokavaram Road,
r/o Gokavaram Road, Jaggampeta, East Godavari District.

11 C.H.Papa Rao, S/o C.H.Ramulu,
Working as Principal, APSWRS (RPRP) G school, Nancherla,
r/o Nancherla, Gandeed Mandal,
Ranga Reddy District. ..... PETITIONERS

AND

1 Government of Andhra Pradesh, reptd., by its Principal Secretary
to Government, Social Welfare (RS.II) Department, Secretariat

Buildings, Hyderabad.

2 The Secretary, A.P.Social Welfare Residential Educational
Institutions Society, Telugu Samkshema Bhavan, Masab Tank,

Hyderabad.

3 K.B.R.Consultancy Services, H.No.1-9-295/27/6,
Vidyanagar, Hyderabad-44.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of writ of mandamus declaring the action of the respondent no.2 in terminating the services of the petitioners with effect from 30-4-2004 by adopting a device of terminating the services of the petitioners through the respondent No.3 who is neither competent to terminate the services of the petitioners nor employer of the petitioners contrary to the terms of employment as indicated in the notification issued by the respondent no.2 inviting applications from eligible candidates to fill up the posts of Principal in A.P.S.W.R.E. Institutions sanctioned by the 1st respondent as illegal, void, arbitrary, without power or authority and malafide and consequentially to direct the respondents to permit the petitioners to continue as principals of the Schools run by the respondent No.2

Counsel for the Petitioners : Mr.M.R.K.CHOWDARY, Senior Counsel

appearing for Mr. M.SUDHEER KUMAR

Counsel for Respondent No.1: G.P. FOR SOCIAL WELFARE &

Mr.VIJAYA BHASKAR MOOLA

Counsel for Respondent No.2: Mr.S.S.PRASAD, SENIOR COUNSEL

Counsel for Respondent No.3: Mr.G.NAGARAJU

The Court made the following :

**ORDER:**

Heard the arguments of Sri M.R.K.Chowdary, learned Senior Counsel appearing for petitioners, the learned Government Pleader for Social Welfare, Mr.Vijay Bhaskar Moola, learned counsel appearing for the first respondent, Mr.S.S.Prasad, learned Senior Counsel appearing for second respondent and Mr.G.Nagaraju, appearing for third respondent.

Assailing the action of the second respondent in terminating the services of the petitioners w.e.f. 30.4.2004 from the posts of Principals, the present writ petition is filed seeking a direction to the respondents to continue the petitioners as Principals of the Schools run by the second respondent.

The second respondent society, which is being run with the aid and support of first respondent-Government is a registered society and is running residential educational institutions in the State of Andhra Pradesh. The first respondent has complete control over the activities of second respondent in the matter of running residential educational institutions. The second respondent is running Social Welfare Residential Educational Institutions in the State of A.P. as per the policy of the Government.

The first respondent-Government, as per its policy of total elimination of child labour, to give sharper focus to the cause of child labour, has decided to establish 64 residential schools for girl child labour in 16 Andhra Pradesh Rural Poverty

Reduction Project Districts and has issued G.O.Ms.No.110, Social Welfare (RS.II) Department dated 28.9.2002 according sanction of staff. The Government decided to start these schools immediately in temporary buildings with 80-160 students each from the academic year 2002-2003 and in the second year, the schools will reach the full strength of 560 students. In order to have the schools operational, second respondent was directed to work out the detailed staff requirements and the Project Monitoring Unit Staff at Head Office level were directed to be taken on deputation. Hence, sanctioning of staff and posting of staff would be necessary without any fresh recruitment. In so far as the school staff is concerned, along with staff sanctioned, permission to fill up teaching posts through regular recruitment would be required and non-teaching staff will be taken on deputation. Upon the request of the second respondent for issue of orders sanctioning the staff for the said 64 schools, the Government has accorded permission for the same vide Annexure, clearly mentioning that the posts sanctioned shall be for the project period only. As per the said annexure to the G.O., 64 Principal posts have been sanctioned for the 64 residential schools along with other staff as cadre strength and the incumbents to the said posts will be recruited for the project period which are to be filled on contract basis.

Pursuant to the decision of the Government sanctioning 64 residential schools for Girl Child Labour and Drop Outs under World Bank aided APRPRP (Velugu Phase-II) Project in 16 Districts of State, vide G.O.Ms.No.110 dated 28.9.2002, second respondent issued Notification dated 28.10.2002 for filling up of vacancies of all the 64 posts of Principals on contract basis in the Social Welfare Residential Schools under Velugu (Phase-II) for the academic year 2002-2003 inviting applications from the female candidates with good academic qualifications who are willing to work as Principals on contract basis in these schools. However, in the note appended to the said notification, it is stated that wherever suitable female candidates are not available for the above posts, male candidates will be considered. The required qualifications for the said post are; a Post Graduate Degree, B.Ed., and the teaching experience of not less than 5 years in any recognized institution and 3 years of administrative experience as Head Master/Principal of a Government recognized High School/Junior College. The reservations were made category wise. The remuneration was fixed for the said post at Rs.10,000/- per month on consolidated basis and the period of contract for the selected candidates will be for a period of one year from the date of joining and the renewal of contract will be considered

based on the satisfactory performance of the candidates. Pursuant to the said notification, petitioners have applied for the post of Principals and selections were made based on percentage of marks secured by the candidates in the qualifying examination by adding weightage for various additional qualifications possessed by the candidates by following the rule of reservation. After the selection process is completed, second respondent by his communication dated 28.10.2002 directed the petitioners to attend the training programme from 21.11.2002 to 26.11.2002 and to take charge of the new schools w.e.f. 27.11.2002 and accordingly all the petitioners have undergone training.

Thus, it is the case of the petitioners that as per the policy of the Government in G.O.Ms.No.110 dated 28.9.2002 read with notification issued by second respondent dated 28.10.2002, the petitioners have been recruited on contract basis initially for a period of one year by the second respondent and as per the notification, they have a right to be considered for renewal of contract by the second respondent based on their satisfactory performance. It is stated that pursuant to the directions of the second respondent, petitioners have undergone training and on the date of taking charge of the new schools on 27.11.2002, the third respondent came into the picture. It is stated that the third respondent vide its letter dated 27.11.2002 addressed to the petitioners stating that the petitioners were selected to work as Principals in the schools run by second respondent and they will be sponsored subject to their willingness to abide by the terms and conditions indicated in the said letter. In the letter, it is stated that the petitioners should abide by the instructions issued by the second respondent from time to time, they will be paid a monthly honorarium of Rs.10,000/-, the third respondent has the right to terminate their services without assigning any reasons whatsoever, that the selection is purely on contract basis, the services can be terminated at any time without assigning any reason and that petitioners will not have any right for absorption or regularization. It is stated that if the petitioners are agreeable to the above terms and conditions, they are requested to give their willingness. It is stated that though the said letter was received by the petitioners, but none of them have given their willingness agreeing to the terms and conditions of the said letter as against the right of termination by the second respondent. But however, the petitioners have complied with all other conditions. It is not in dispute that the petitioners have been receiving their monthly consolidated salary through third respondent. It is the case of the petitioners that except receiving

the monthly salary, there is no privity of contract between the third respondent and petitioners. It is stated that the petitioners do not know anything about the understanding/ agreement arrived at between respondents 2 and 3 and however, the agreement said to have been entered in 2003 for hiring man power services is not binding on the petitioners, since that was entered into subsequent to the selection and appointment of the petitioners. It is stated that pursuant to their selection, petitioners have reported to duty and are working as Principals. It is the case of the petitioners that just before their selection, staff association of second respondent filed W.P.No.22511 of 2002. This Court by its order dated 11.11.2002 in WPMP.No.28252 of 2002 has directed that the selection process as per the notification dated 28.10.2002 may go on, but the appointments should not be made to the posts of Principals on contract basis sanctioned by the Government in 64 Residential Schools for Girl Child Labour and Drop Outs under World Bank Aided APRPRP (Velugu Phase-II) Project in 16 Districts of the State notified in the notification dated 28.10.2002. However, the said writ petition was dismissed as withdrawn on 19.11.2002.

After completing the initial period of one year, the third respondent by his letter dated 27.11.2003 informed the petitioners that their services are not required as Principals, A.P. Social Welfare Residential (APRPRP) Schools, and, accordingly terminated the services of the petitioners w.e.f. 27.11.2003. However, by letter dated 30.11.2003, the third respondent informed the petitioners that they have been selected to work on contract basis as Principals in the second respondent schools and the contract period will be in force till 30.4.2004 and requested them to assume duty as Principals immediately on 1.12.2003. All the petitioners have worked upto 30.4.2004 and even before the contract period, petitioners have made a representation dated 2.4.2004 to the second respondent requesting to renew their period of contract and to continue them as Principals as they did commendable job as Principals and improved the educational standards of downtrodden in spite of lack of absolute teaching and non-teaching staff. It is stated that they are fortunate to participate in the “Mahayagna” of eliminating child labour through second respondent schools. It is stated that there are no adverse remarks against the petitioners and their performance is satisfactory and therefore, they are entitled for renewal of contract by continuing them as Principals in the second respondent

schools.

The third respondent by his proceedings dated 12.4.2004 terminated the services of the petitioners w.e.f. 30.4.2004 on the ground that their contract period will be completed by 30.4.2004. Being aggrieved by the said termination, petitioners have filed the present writ petition challenging the action of second respondent in adopting a device of terminating them through the third respondent who is neither competent to terminate their services nor is the employer and the said termination is contrary to the terms of employment as indicated in the notification issued by the second respondent dated 28.10.2002.

Respondents have filed their counter affidavits. The second respondent in his counter affidavit submits that he is not the appointing authority of the petitioners and the third respondent sponsored the petitioners to work as Principals and that the second respondent is no way concerned with the appointments and terminations of the petitioners. It is also stated that third respondent has been paying the salaries to the petitioners and the project for which the petitioners were recruited is a time bound project and therefore they are bound by the contract and therefore, the petitioners cannot have any right to continue in the posts after completion of contract period. It is stated that no doubt second respondent issued notification dated 28.10.2002 calling for applications for filling up of vacancies to the post of Principals on contract basis and interviewed the petitioners, but the third respondent by his letter dated 27.11.2002 alone asked the petitioners to give their willingness to abide by the terms and conditions mentioned in the said letter. It is further stated that the petitioners are no way concerned with the second respondent since they have not entered any agreement with the second respondent nor the second respondent appointed them. It is the third respondent who had entered into agreement with second respondent to provide the required man power and the petitioners did not enter any agreement directly with the second respondent nor the second respondent appointed them. It is also stated that the third respondent has issued appointment letters to the petitioners and remuneration to the petitioners has been paid through the third respondent only. Therefore the writ petiton is not maintainable against respondents 1 and 2 and the claim made by the petitioners is untenable. It is further stated that the second respondent has not terminated the services of the petitioners and the agreement between second respondent and third respondent was upto 30.4.2004 alone and therefore, the services of the petitioners automatically come to

an end by 30.4.2004 and the second respondent is not responsible for the termination of the services of the petitioners by the third respondent.

Third respondent also filed a counter affidavit stating that it has entered into an agreement with the second respondent for supply of man power and in pursuance of the said contractual agreement, it has issued appointment orders to the petitioners initially for the academic year 2002-2003 and their services were terminated w.e.f. 27.11.2003 since the second respondent had terminated the contract with the third respondent, but however, their services were re-engaged on contract basis w.e.f. 1.12.2003 till 30.4.2004 and from 1.5.2004, since the second respondent has not extended the period of contract, the services of petitioners were terminated, and, therefore the writ petiton itself is not maintainable as they are not permanent employees.

This Court while admitting the writ petition on 28.4.2004, directed the respondents to continue the petitioners in their respective posts till 25.6.2004. Aggrieved by the said order, the second respondent filed W.A.NO. 883 of 2004 and the said writ appeal was disposed of by order dated 23.6.2004 on the ground that the interim stay granted by the learned single Judge is coming to an end on 26.6.2004 and the writ petition itself was directed to be posted for final hearing before the learned single Judge on 28.6.2004.

I have perused the relevant records and the agreement dated 21.7.2003 entered into by the second respondent with third respondent for hiring manpower. The said agreement discloses that the services of the third respondent were taken for a period of one year from 1.10.2002 to 30.9.2003. Thereafter another agreement was entered in December 2003 for a period of one year from 1.12.2003 to 30.4.2004 for supply of manpower services to work as Principals in second respondent schools. Condition No.18 was incorporated in the agreement by way of handwriting without any attestation to the effect that the validity of the agreement will be from 1.12.2003 to 30.4.2004 only.

Admittedly, there was no agreement between the respondents 2 and 3 either at the time of issuance of notification dated 28.10.2002 or at the time when the selection process of the petitioners was completed and when they were directed to undergo training. The second respondent by his communication dated 18.11.2002 directed the petitioners to attend the training programme from 21.11.2002 to 26.11.2002 and

only after the training is completed, the third respondent issued letter dated 27.11.2002 to the petitioners stating that they were selected to work as Principals in the schools run by the second respondent and they will be sponsored subject to their willingness to abide by the terms and conditions mentioned in the said letter and that the third respondent has the right to terminate the services of the petitioners without assigning any reason whatsoever. When the said letter was issued to the petitioners, there was no agreement between respondents 2 and 3. This Court by its order dated 11.11.2002 in W.P.M.P.Nos.28252 & 28253 of 2002 in W.P.No.22511 of 2002 directed the respondents to go on with the selection process as per the schedule of notification dated 28.10.2002, but the appointments should not be made to the posts of Principals, but subsequently the writ petiton was dismissed as withdrawn on 19.11.2002.

Admittedly, the petitioners have not entered into any agreement or had any concern with third respondent till they received the letter dated 27.11.2002 from the third respondent. The third respondent was neither a selection authority nor the employer of the petitioners. The petitioners were recruited as Principals on contract basis pursuant to the notification dated 28.10.2002 issued by second respondent alone. Therefore, it is incorrect to state that the third respondent is the employer of the petitioners. The third respondent who is neither a pay master or employer of the petitioners, is not empowered to initiate any disciplinary proceedings against the petitioners. The third respondent was brought in without any consent of the petitioners subsequently. Even when the appointment letters were issued to the petitioners, there was no agreement between respondents 2 and 3. No doubt, the monthly remuneration was paid through the third respondent, but, the same will not give rise to any right to claim that the third respondent is the employer of the petitioners. As per the notification dated 28.10.2002 issued by the second respondent, no doubt the period of contract is only for a period of one year, but the petitioners have a right of renewal to be considered by the second respondent based on their satisfactory performance. The only grievance of the petitioners in this writ petition is that the second respondent never considered their case for renewal of contract, when admittedly, the project period is being continued. It is the case of the petitioners that they have a right of renewal to be considered by the second respondent from time to time on yearly basis for the project period. If there are any adverse remarks against the petitioners with regard to their performance, it is always open for the second respondent to refuse to continue their contract.

The learned Government Pleader produced the records of the Government. G.O.Rt.No.519 Social Welfare (RS.I) Department dated 9.12.2004 thereof, reads as follows :

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Social Welfare Department – APSWREIS – Projects – Taking over the services of Contract Principals as Junior Lecturers/Teachers on Contract basis – Orders – Issued.

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SOCIAL WELFARE (RS.I) DEPARTMENT

G.O.Rt.No.519 Dated: 9.12.2004

Read the following:

1) Representation from Sri S.V.Satya Rao and (12) others dated 30.5.2004, 9.6.2004.

2. From the Secretary, APSWREIS, Letter No.PS3/30268/2002

dated 28.6.2004, 7.7.2004 and 2.11.2004.

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In the reference first cited, the Contract Principals who were taken on contract basis through M/s K.B.R. Consultancy Services for the post of Principal in Social Welfare Residential School (APRPRP) under Velugu (Phase-II), whose contract period is over by 30.4.2004, have represented to the Government for renewal of their contract. Since the post of Principal is the post of Head of the Institution both with administrative and financial powers, Government found it is essential to have regular employees of APSWREIS as Principals, instead of Contract Principals.

Based on the representations of the Contract Principals to continue them in the Society, Government after careful consideration of the matter have decided that the (12) persons reported in the reference 2nd cited dated 28.6.2004 who worked as Contract Principals be taken on Contract basis as Junior Lecturers/Teachers, depending on their qualifications and the vacancy position in the Society, pending decision on the case now in the Hon'ble High Court.

The Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions

Society, Hyderabad is requested to take action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

AJOYENDRA PYAL,

PRINCIPAL SECRETARY TO GOVERNMENT

The recitals of the said G.O. discloses that pending finalisation of this writ petition, the Government have decided to continue the petitioners as Junior Lecturers/Teachers on contract basis depending upon their qualifications and vacancy position in the second respondent society. No doubt the said arrangement is only an interim arrangement and the Government is awaiting the orders of this Court.

The only question that arises for consideration is as to whether the petitioners are entitled to be considered for renewal of their contract period for the academic year 2004-2005 onwards on yearly basis for the project period. Government vide orders G.O.Ms.No.110 dated 28.9.2002 accorded permission for sanction of staff for Project Monitoring Unit in A.P. Social Welfare Residential Educational Institutions Society and the posts sanctioned shall be for the project period only, but in the notification, applications were invited for the post of Principal on a monthly consolidated remuneration of Rs.10,000/- initially for a period of one year and basing on the satisfactory performance, the renewal of contract will be considered. The learned counsel for petitioners submit that, in fact, the notification itself is contrary to the said G.O. and as per the said G.O., the second respondent is bound to consider the renewal of contract period of the petitioners based on their satisfactory performance.

In view of the above discussion, I am of the opinion that as per the mode of recruitment of Principals as indicated in the G.O.Ms.No.110 dated 28.9.2002 read with the notification dated 28.10.2002, the second respondent is bound to consider the case of the petitioners for renewal of contract based on their satisfactory performance and the dis-continuance of the petitioners without considering for renewal is illegal and unsustainable.

Accordingly, the writ petition is disposed of directing the second respondent to

consider the cases of the petitioners for renewal of their contract period to the posts of Principal based on their satisfactory performance for the academic year 2004-2005 onwards. No costs.

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V.ESWARAIAH, J

Date: 14.12.2004

Note: L.R. Copy to be marked.

Furnish C.C. in three days.

B/o

DA

One fair copy to his Lordship Sri Justice V.Eswaraiah (for his Lordships kind perusal)

To

1 The Principal Secretary to Government of Andhra Pradesh,
Social Welfare (RS.II) Department, Secretariat

Buildings, Hyderabad.
2 The Secretary, A.P.Social Welfare Residential Educational
Institutions Society, Telugu Samkshema Bhavan, Masab Tank,

Hyderabad.
3 Two CCs to the G.P. for Social Welfare, High Court Buildings,

Hyderabad (OUT).

4 Two CD copies.

5 8 LR copies.

6 The Under Secretary, Union of India, Ministry of Law, Justice and
Company Affairs, New Delhi.

7 The Secretary, A.P. High Court Advocates' Association Library, High
Court Buildings, Hyderabad.